



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Possible Motion to Reconsider/Reconsideration of Appeal of John Donati, 1217 Edgewood Drive, to Build Swimming Pool Deck/Patio Over a Public Utility Easement and Request to Enter Into a Hold Harmless Agreement with the City of Lodi

MEETING DATE: August 3, 1994

PREPARED BY: City Clerk

RECOMMENDED ACTION: Discussion and appropriate action.

BACKGROUND INFORMATION: As Council will recall, at its meeting of July 20, 1994, Mr. John Donati, 1217 Edgewood Drive, Lodi, spoke under Comments by the public and asked the City Council to reconsider his appeal in which he requested to build swimming pool deck/patio over a Public Utility Easement and to enter into a Hold Harmless Agreement with the City of Lodi.

According to the City Attorney, should the City Council wish to reconsider this matter, a motion to reconsider will first need to be brought up by a Council Member of the prevailing side. Following a successful vote on the motion, the City Council may then discuss the reconsideration of Mr. Donati's appeal. Attached please find copy of information that was presented to the City Council by Mr. Donati at the last meeting.

FUNDING: None required.


Jennifer M. Perrin
City Clerk

JMP

Attachment

APPROVED _____

THOMAS A. PETERSON
City Manager



recycled paper

July 20, 1994

City Council of Lodi
c/o Lodi City Clerk
221 West Pine Street
Lodi, CA 95240

Re: Appeal of John Donati, 1217 Edgewood Drive, Requesting to Build a Deck/Patio Over a Public Utility Easement and to Enter into a Hold Harmless Agreement with the City of Lodi.

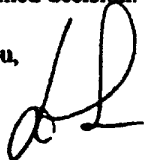
On Wednesday, July 6, 1994 the members of the City Council denied my appeal, 3-1, to encroach 3' into an 8' P.U.E. with a 4" concrete and brick deck. A number of items were stated by City employees during the public hearing that I could not respond to as they were not in my, nor the Council's, scope of knowledge. Upon further discussions with the City Attorney, Building Dept. and Public Works, I feel your decision, through no fault of your own, was based upon misinformation and a lack of knowledge of similar requests.

Because I feel your decision was reached without an accurate picture being presented by the Council's advisors, I am requesting that you reconsider your prior decision and allow yourselves to reach an informed decision based on actual, specific facts and examples by granting me a re-hearing.

Attached are items I feel were misrepresented and not presented by your advisors which are very important in reaching an informed decision. The information presented is information from City of Lodi departments, obtained by me in less than an hours time; Information that is easily and readily available if your ask for it or if you know to ask for it. It presents three cases very similar, if not more extreme, to mine in which encroachment permits were approved, usually without any fuss.

In closing, let me reiterate that my only goal is still the same, to upgrade my family's home by building a pool and surrounding decking, not rewrite ordinances or endanger the public's welfare. I am aware that your initial decision is "final" and that I do have recourse through the courts. Instead of taking a non-productive, negative path, I ask that you grant my request so you have a chance to make a fair, equitable and informed decision.

Thank you,



John D. Donati
1217 Edgewood Drive
Lodi, CA 95240
(209)333-7466

attachments

The purpose of this section is to present accurate information that was speculated on during the July 6, 1994 public hearing. Information enclosed has been given to me by City employees (FACT), as well the information that was stated at the hearing, by whom and to the best of my recollection. I will also add my thoughts on each issue (COMMENT).

1. WATER MAIN PLACEMENT

FACT: The placement of the Water Main line in the P.U.E. is 1' from southern property line. Its depth is 3'. The line was marked by City employees on July 15, 1994 at owner's request

FACT: The Water Main line will be 4' from the edge of the decking.

RONSKO: The Water Main line is 3'-4' from property line and 1' foot from the decking. About 3' clearance minimum is required to dig down to the line.

COMMENT: 4' is more than reasonable clearance for standard digging purposes.

2. WATER METER PLACEMENT

FACT: The water line into the house runs parallel to the east property line. It is covered with dirt and ground cover. The line was marked by City employees on July 15, 1994 at owner's request.

RONSKO: The meter might have to be placed in the deck area, or possibly even in the pool itself.

COMMENT: I have no idea why he brought up this non-issue, possibly trying to broaden the issue at hand with more unknown, unsubstantiated remarks. Setting of a water meter will not be a concern and is not an issue.

3. A HARDSHIP MUST BE SHOWN

FACT: The Lodi City Municipal Code section that my building permit is being reviewed under is Chapter 15.44 as mentioned in the Mar. 4, 1994 letter to me and the Council Communication letter prepared by Public Works Director, Jack Ronsko for the City Council, dated July 6, 1994.

McNATT: When asked by the Council during the public hearing if a "hardship" had to be shown in the appeal process, City Attorney Bob McNatt stated, "Yes" and went on to explain how for equality in future decisions this decision needed to have special reasons ...

FACT: Nowhere in Chapter 15.44 does it state that a "hardship" must be present. It does state that an encroachment permit is required (15.44.030.B) and the appeal process is directly to the City Council (15.44.100).

FACT: All 3 Council members who voted against my initial appeal stated they "did not see a hardship and thus had to vote 'No'".

FACT: On July 18, 1994, when asked his reference source for "hardship", Mr. McNatt stated it was Municipal Code 17.72 and faxed me a copy for reference.

COMMENT: Code 17.22 refers to the "Zoning Commission" and "Zoning Appeals". Nowhere in this code does it mention "easements" or "encroachment permits". Code 17.22 also states its appeal process goes through the Planning Commission first, then City Council. Code 17.22 has nothing to do with my situation and items mentioned in its text should not be inferred into Code 15.44. Thus, 3 of the Council members voted against my appeal, specifically on requirements that were not pertinent to my permit review on advise from their staff.

4. MY REQUEST IS UNIQUE

FACT: At least 3 encroachment requests were granted during January and February 1994, alone.

- Maurice Ray, 1201 Edgewood Dr. - spa, pool house, non-moveable shed, ... on 8' P.U.E.

- Anthony Alegre, 1630 Edgewood Dr. - steps at rear of house on 5' P.U.E.

- Seventh Day Adventist, 730 S. Fairmont Ave. - 6+' tall block wall with foundation on 8' P.U.E.

RONSKO: Stated he could only remember 1 request in his 15 years that was similar to mine. Also, if the Council O.K.'d my appeal "they might as well change the code so future requests won't have to go through this process".

COMMENT: In less than 1 hour I found two permits that seemed to be given over the counter and Mr. Ray's that went through the Council. If I found them so fast and easy, how come Mr. Ronsko doesn't seem to know their plenitude. Maybe he has only seen 1 in 15 years because most are O.K.'d over the counter and are not required to go through my long ordeal. Also, it seems as though 2 of these requests were given after work had either started or even completed. There is the appearance that even though people break the law by building without permits, they are allowed to keep their violation because it would cost too much to correct it. Yet when I request a similar or more minor encroachment, up front, adhering to code, I get different consideration.

5. ALLOWABLE COVERAGE

FACT: In the Public Works Department's "Owner's Certificate" (see attachment 1) that all lots are subject to and code 15.44 that I am being reviewed under, it states, "No building or structures shall be constructed nor shall anything be planted within the easement which would interfere with the use or operation of public utilities in the easement." There are no specifics given in either document as to limitations of what is allowable or not.

RONSKO: Says that he allows up to a standard 4" concrete slab and plants that don't grow into the pipes.

COMMENT: I am being reviewed on a standard for which there isn't anything in writing. Since there are no specifics, the code is left open to interpretation, but whose interpretation? Mr. Ronsko allows 4", his people allow for more over the counter, as does the City Council. Also, my project does not "interfere with the use or operation of public utilities" any more so than previous permits that have been approved. I expect to be given the same conciliation that others before me were given.

The follow section has 3 examples of projects similar in nature to mine where encroachment permits were approved.

EXAMPLE #1

MAURICE RAY, 1201 EDGEWOOD DR.

SITUATION: Built in-ground spa, massive pool house, storage shed, ... in 8' P.U.E., without permits. Actually built over City water main, rendering the water main and the water service inaccessible. This was declared a public nuisance and dangerous. He was ordered to abate these structures. For more detailed information please refer to City file regarding this issue.

OUTCOME: Appeal unanimously approved by the Council on Feb. 16, 1994. The Council found that he was substantial damaged (monetarily) and stated, "the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other properties."

COMMENT:

1. I wish I could afford his lawyer.
2. I live next door to Mr. Ray. While his encroachments do not bother me, it is apparent that I am not being treated fairly, nor equitably. He has "structures". His pool house is 8-foot+ tall with a 6"X12" top beam, enclosed walls, full bath (plumbing). I am looking to build up loam soil 18", put on a 4" concrete slab with decorative brick. Mine is not a structure.
3. He encroached massively, even on top of the water main rendering it inaccessible. I am requesting to encroach only 3' and I will still be 4' from the City water main. There is no way Mr. Ronsko can complain about my situation when you compare it to what has been approved here.
4. His in-ground spa is in the P.U.E.. I consciously put my spa outside the P.U.E. in order not to break the code. It will be 2' away.
5. Without making major changes, Mr. Ray has agreed to hold the City harmless, as I too have agreed all along, but on a much, much smaller project.
6. All of his aforementioned work was done without permits, a direct violation of the law, yet because it might cost him \$20,000+ to comply, the Council allowed him the encroachment permits. I am requesting up front, without breaking the law, a much smaller encroachment and should not expect any less conciliation than was shown Mr. Ray.
7. If the Council has found "the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other properties" for Mr. Ray, there is no equitable way they can find less for my appeal.

EXAMPLE #2

ANTHONY ALEGRE, 1630 EDGEWOOD DR.

SITUATION: The steps at the rear of the house encroached in a 5' P.U.E. The construction was started on Dec. 8, 1993, but the encroachment permit wasn't approved until Feb. 3, 1994. It is my understanding the permit was obtained after the encroachment was discovered.

OUTCOME: With no back up documentation, it appears the encroachment permit was approved over the counter on Feb. 3, 1994. It also appears as though Mr. Alegre agreed to a "Hold Harmless" agreement with the City. See attachment 2

COMMENT:

1. Similar to Mr. Ray, it appears this permit was issued after the fact, not up front as I am trying to accomplish.
2. At my initial hearing, Mr. Ronsko seems to have a major concern with the fact that my deck was going to have steps, yet his department approved a permit for Mr. Alegre for specifically that, stairs. The stairs must be higher than 4", because Mr. Ronsko allows up to 4" concrete slab without a permit.
3. Mr. Alegre put in stairs in a P.U.E., I am requesting to put stairs in a P.U.E.. I am expecting no less conciliation than what was shown Mr. Alegre.

EXAMPLE #3

SEVENTH DAY ADVENTIST CHURCH, 730 S. FAIRMONT AVE.

SITUATION: The Church built a 6' tall block wall in the 8' P.U.E. It is on the north and east part of their property and is approx. 750' long. Being a very solid wall, it appears to have a sturdy foundation.

OUTCOME: With no back up documentation, it appears the encroachment permit was approved over the counter on Jan. 24, 1994. It also appears as though the Church agreed to a "Hold Harmless" agreement with the City. See attachment 3.

COMMENT:

1. It appears the Church requested the permit prior to starting their project.
2. During my hearing Mr. Ronsko expressed concern that my 18" loam filled deck would be tougher than usual to demolish should "there be a fire and the City water main were to break at the same time." This structure was approved and is much taller and more heavily constructed than my project.
3. As with the other 2 examples, I am expecting no less conciliation than what was shown here to the Church.



CITY OF LODI
PUBLIC WORKS DEPARTMENT

MAP CERTIFICATES

OWNERS' CERTIFICATE

We certify that we are the only parties having record title interest in the lands subdivided and shown on this map and we consent to the preparation and recordation of this map.

(We offer to dedicate for public use all streets and public utility easements (PUEs) shown on this map. The PUE dedication gives the City, owners of public utilities, and owners of cable TV franchises the right to access, construct, maintain, inspect, repair, replace, remove, and operate their facilities in the PUEs. No buildings or structures shall be constructed nor shall anything be planted within the easement which would interfere with the use or operation of public utilities in the easement.

(date)

Name(s)

RECORDER'S CERTIFICATE

Filed this ____ day of _____, 19__, at ____ m. in
(Book of Maps & Plats, Volume ____, page ____) (Book
____ of Parcel Maps, at page ____) at the request of
_____.

Signed _____

County Recorder

By _____

Deputy

NOTES (Use where applicable)

1. Lot _____ except areas covered by buildings or structures shown on the approved building permit plans and subsequent revisions thereto is hereby offered as a public utility easement. "Subsequent revisions" to the plans shall be approved by the affected utilities and any necessary utility relocations will be made at the expense of the developer/owner.
2. Requirements of the Lodi Municipal Code for the dedication of rights-of-way and easements, payment of fees and installation of off-site street improvements and utilities have not been met at this time and must be met prior to development or issuance of a building permit or when requested by the City (on Parcels _____).

Dr. MW	No	Date	Revision	Appr.	Appr. ed By:
Ch. 290					1-30-87
Date 10/87					Works Director Date

STD PLAN
605B



CITY OF LODI

PUBLIC WORKS DEPARTMENT
221 W. PINE ST. 333-8708
CALL BOX 3006
LODI, CALIFORNIA 95241-1910

PERMANENT ENCROACHMENT PERMIT

ATTACHMENT 2 ENCROACHMENT PERMIT

Permit Address 1630 Edgewood Drive (APN#: 039-370-40)

Applicant's Name Anthony J. Alegre Address situs
(Owner/Contractor)

Starting Date 12/08/93 Completion Date _____ License No. _____ Phone _____

Owner/Contractor _____ Address _____ Phone _____

Pursuant to the provisions of the Lodi Municipal Code, the undersigned applies for permission to excavate, construct, and/or otherwise encroach on City Street Right-of-Way or Easement by performing the following work:

NOTIFY USA (800) 642-2444 48 HOURS PRIOR TO ANY EXCAVATION.

The work consists of portion of residential structure (steps at rear of house) encroaching within a 5-foot Public Utility Easement. Encroachment is as shown on approved Building Dept. plans.

The City holds no responsibility for damage to structure due to use of right-of-way maintenance on existing utilities or installation of new public facilities.

Encroaching structure is to be maintained by Owner.

In the event the encroaching structure should be removed or demolished, this encroachment permit becomes void and reconstruction of any structure shall abide by the recorded Easement Deed.

Owner agrees to notify any future owner of this requirement.

Permit void if work not started within 6 months of permit date.

(Space For Sketch)

☐ Licensed Contractor required for this work.

☐ Certificate of Insurance in the owner's name which names the City of Lodi as an Additional Named Insured for Comprehensive General and Automobile Insurance in the amount of \$1,000,000 combined single limit is required.

The undersigned does hereby agree to indemnify and save the City of Lodi free and harmless from any liability, in accordance with the provisions of Sec. 12.04.040 of the Lodi Municipal Code. Permittee is specifically aware of Sec. 12.04.290 thereof relating to the relocation or removal of said encroachment if future construction requires such relocation.

If the work for which this encroachment permit has been issued has not been completed by _____, the City of Lodi shall have the right to complete the work, and to file a Cause of Action to recover the City's expenses in completing the work and for all other costs and fees in accordance with the provisions of Sec. 12.04.120 of the Lodi Municipal Code.

Date 2/2/94 Signed [Signature]

Required Improvement Security

Certificate of Insurance
Comp. Gen. Policy No. _____ Exp. _____

Automotive Policy No. _____ Exp. _____

Referred to Mei Grandi Date _____

Inspected _____ Date _____

Completed _____ Date _____

Reviewed _____ Date _____

This permit is granted subject to all provisions of Chapter 12.04 of the Lodi Municipal Code and to all general provisions and applicable special provisions as shown on the reverse side.

Permit Approved: CITY OF LODI

By: [Signature]

☐ Public Above Ground

Date 2/2/94

☐ Public Underground

☒ Private, to be maintained or relocated by owner as required.

☐ Other Permit No. 94010



CITY OF LODI

PUBLIC WORKS DEPARTMENT
221 W. PINE ST. 333-6706
CALL BOX 3008
LODI, CALIFORNIA 95241-1910

PERMANENT ENCROACHMENT PERMIT

ATTACHMENT 3 ENCROACHMENT PERMIT

Permit Address 730 SOUTH FAIRMONT AVENUE

Applicant's Name Seventh Day, Adventists Northern Calif, Conference Assn

(Owner/Contractor) Address P O BOX 23165, Pleasant Hill, CA 94523

Starting Date 1/24/94 Completion Date _____ License No. _____ Phone 333-1044

Owner/Contractor _____ Address _____ Phone _____

Pursuant to the provisions of the Lodi Municipal Code, the undersigned applies for permission to excavate, construct, and/or otherwise encroach on City Street Right-of-Way or Easement by performing the following work:

NOTIFY USA (800) 642-2444 48 HOURS PRIOR TO ANY EXCAVATION.

The work consists of INSTALLATION OF BLOCK WALL WITHIN

THE 8 FOOT PUBLIC UTILITY EASEMENT (8'PUE) ON THE NORTH AND EAST PROPERTY LINES OF THE ABOVE SITE; INSTALLATION SHALL BE PER APPROVED BUILDING DEPARTMENT PLANS.

(Letter of authorization from "Northern California Conference Assoc. of Seventh-Day Adventists" attached.)

The City holds no responsibility for damage to structure due to use of right of way in maintaining of existing utilities or installation of new public facilities.

Owner agrees to relocate at his expense encroaching structure, if required, by City. Encroaching structure is to be maintained by owner.

Owner agrees to notify any future owner of this requirement.

Permit void if work not started within 6 months of permit date.

(Space For Sketch)

☐ Licensed Contractor required for this work.

☐ Certificate of insurance in the owner's name which names the City of Lodi as an Additional Named Insured for Comprehensive General and Automobile Insurance in the amount of \$1,000,000 combined single limit is required.

The undersigned does hereby agree to indemnify and save the City of Lodi free and harmless from any liability, in accordance with the provisions of Sec. 12.04.040 of the Lodi Municipal Code. Permittee is specifically aware of Sec. 12.04.290 thereof relating to the relocation or removal of said encroachment if future construction requires such relocation.

If the work for which this encroachment permit has been issued has not been completed by _____, the City of Lodi shall have the right to complete the work, and to file a Cause of Action to recoup the City's expenses in completing the work and for all other costs and fees in accordance with the provisions of Sec. 12.04.120 of the Lodi Municipal Code.

Date Aug 17, 1993 Signed K. B. S. PASTOR

Required Improvement Security

Certificate of Insurance

Comp. Ger. Policy No. _____ Exp. _____

Automotive Policy No. _____ Exp. _____

Referred to GARY MURDOCK (333-6836) Date _____

Inspected [Signature] Date _____

Completed [Signature] Date 2-94

Reviewed _____ Date _____

This permit is granted subject to all provisions of Chapter 12.04 of the Lodi Municipal Code and to all general provisions and applicable special provisions as shown on the reverse side.

Permit Approved: CITY OF LODI

By: [Signature]

☐ Public Above Ground

Date 4/24/94

☐ Public Underground

☒ Private, to be maintained or relocated by owner as required.

☐ Other

Permit No. 94006

WATER

P.U.E

DONATI,
1217 EDGEWOOD DR

